

SENATOR NICHOL: Mr. Chairman, members of the Legislature, this is an amendment that several of us who are interested in it have been working on. I think it has the blessing of those who are interested in it and we suggest that you go along with these two amendments. You have in front of you a sheet that shows approximately what the bill will be if you adopt these two amendments that I have. If I perceive the mood of this body correctly, the majority wants some form of mandatory jail sentence for repeat DWI offenders no matter what. The committee draft of LB 568 limits judicial discretion to two possible options, the first being to impose a flat sentence as provided for within the penalty provisions of Class W misdemeanor. The second is to allow for the use of probation. The committee has drafted a mandatory suspension period for drivers license as a term of probation. In other words as part of the probation. Amendments now offered would also include a short jail term also as a part of probation. Nebraska law is clear on this subject. We can provide for confinement as a part of probation. The courts, however, need the statutory authority to do this. The first part of this amendment provides the municipal courts with statutory authority. The county and district courts already have this authority. The second part of this amendment provides for jail time as a condition of probation. Second offense would carry a mandatory 48 hours in jail. Third offense would carry a mandatory 7 days in jail. Again these possible penalties are within the possible penalties one could receive for these offenses. As I said we are well within statutory authority here. We are also within our Constitutional authority to provide jail time as a term of probation. There is, however, a 1973 Supreme Court case which may lead to some litigation in this area. This court case held that if a person has been sentenced to a jail as a term of probation the latter violates his probation and is taken back to court for sentencing on the original offense the courts can not resentence that person to a term of imprisonment. It should also be pointed out that this court case came down prior to courts having statutory authority to provide jail time as a term of probation. However, the courts holding was much broader than the absence of statutory authority and would have to be ultimately overruled if the same type of case arose under this law. If it were not overruled we would be removing a great deal of the incentive for people to successfully remain on probation. There are other risks involved in taking this risk also. One of those risks is that we encourage jury trials because people can not avoid jail by getting probation. Another risk we run is that by including jail time as a term of probation we detract from the rehabilitative nature of our probation system and